UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA	)	
	)	No. 2:14-CR-76
v.	)	
	)	JUDGE GREER
BRIAN C. ROSE AKA JOHN HANKINS	)	Plea Agreement per Rule 11c1C

PLEA AGREEMENT

The United States of America, by the United States Attorney for the Eastern District of Tennessee, and the defendant, Brian C. Rose, and the defendant's attorney, Jerry W. Laughlin, have agreed upon the following:

1. The defendant will plead guilty to the following count in the indictment:

   a) Count One. Conspiring to commit wire fraud and mail fraud in violation of 18 U.S.C. §§ 1349, 1341, and 1343.

The punishment for this offense is as follows. A maximum term of imprisonment of 20 years; a maximum fine of $250,000; up to three years on supervised release; $100 special assessment; forfeiture of the fruits and instrumentalities of the offense; and restitution as ordered by the court.

2. In consideration of the defendant's guilty plea, the United States agrees to move the Court at the time of sentencing to dismiss the remaining counts against the defendant in this indictment.

3. The defendant has read the indictment, discussed the charges and possible defenses with defense counsel, and understands the crimes charged. The defendant is pleading guilty because the defendant is in fact guilty.

4. In support of the defendant's guilty plea, the defendant agrees and stipulates to the following facts, which satisfy the offense elements. These are the facts submitted for purposes of the defendant's guilty plea. They do not necessarily constitute all of the facts in the case. Other facts may be relevant to sentencing. Both the defendant and the United States retain the right to present additional facts to the Court to ensure a fair and appropriate sentence in this case.

a. At all times relevant to the indictment, the defendant Brian C. Rose lived in Johnson City, in the Eastern District of Tennessee, and New Century Coal operated out of offices located in Johnson City, in the Eastern District of Tennessee.

b. In 2011, Brian C. Rose and others caused a corporation known as New Century Coal to become domesticated under the laws of the State of Nevada and established an office for New Century Coal at 1009 Lark Street, Johnson City, Tennessee. Brian C. Rose was a co-developer, co-leader, and co-decision-maker for New Century Coal from its domestication date through June 17, 2014.

c. Rose and others solicited investors through New Century Coal based upon the promise of planned development of "Blue Gem" coal. Rose and others marketed New Century Coal as an issuer/sponsor of partnerships with individual investors for the purpose of placing investors in limited liability partnerships in specific coal mine operations, and as the partnership mine operator of each specific coal mine. Each offering was limited to a small number of shares for a specific coal mine.

d. As part of the solicitation of investment funds, Rose and others prepared and distributed via United States mail and private interstate carrier documents which included private placement memoranda (disclosing risks and hazards to potential investors), investor suitability questionnaires (intended to determine investors' suitability for investment in the coal mines), a

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combined turnkey mining development agreement and mine operating contract (in order to provide assurance to the investor that he or she has actually invested in a coal mine which is anticipated to produce coal), and a subscription agreement (in order to give the investor an ownership interest in a potentially viable coal mine and other valuable rights in the operation of the mine and oversight of the investment).

e. Rose also participated in the solicitation for the sale of stock of New Century Coal, Inc. In the course of soliciting funds from JP&P Investments,LLC, Rose and others made material misrepresentations of existing facts to that investor in an effort to secure the purchase by the investor of shares of stock in New Century Coal, Inc., for the purchase price of Two Million and No/100 Dollars ($2,000,000.00), and which purchase price was wired by JP&P Investments, LLC, to New Century Coal, Inc.

f. During the course of the conspiracy to commit mail fraud and wire fraud, defendant and others made material misrepresentations and false statements to investors and potential investors. These misrepresentations and false statements were made by Brian C. Rose, his co-defendants, and others in writing using the public mails and interstate carrier, by electronic mail using the internet, by telephones and telefaxes, and other means of interstate communications and commerce.

g. During the course of the conspiracy to commit mail fraud and wire fraud, defendant diverted investor funds away from the exploration, development, and production of coal and used investor funds to compensate staff, to fund his own personal expenses, and for other uses which were not related to the exploration, development, or production of coal. At all relevant times, Brian Rose acted with the intent to defraud investors and willfully participated in the conspiracy to commit mail fraud and wire fraud with knowledge of its fraudulent nature.

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h. Defendant is not admitting or denying any allegations concerning Earth Energy Exploration prior to 2011.

5. The defendant understands that by pleading guilty the defendant is giving up several rights, including:

a) the right to plead not guilty;

b) the right to a speedy and public trial by jury;

c) the right to assistance of counsel at trial;

d) the right to be presumed innocent and to have the burden of proof placed on the United States to prove the defendant guilty beyond a reasonable doubt;

e) the right to confront and cross-examine witnesses against the defendant;

f) the right to testify on one's own behalf, to present evidence in opposition to the charges and to compel the attendance of witnesses; and

g) the right not to testify and to have that choice not used against the defendant.

6. Pursuant to Fed. Rule Crim. Pro. 11c1C, the defendant and the United States agree as follows:

a. The defendant and the United States agree to the following terms for purposes of calculating the defendant's Advisory Guideline Range under the United States Sentencing Guidelines. In the event the Court declines to accept the parties' stipulated terms, the defendant will have the right to withdraw his guilty plea.:

1) Solely for purposes of calculating the defendant's Criminal History Category in accordance with U.S.S.G. § 4A1.1, the instant offense commenced on May 25, 2011.

2) The base offense level under U.S.S.G. § 2B1.1(a) is 7;

3) The loss amount for purposes of U.S.S.G. § 2B1.1(b)(1) is $7 million, which yields an increase of 18 offense levels;

4) The offense involved more than 10 victims for purposes of U.S.S.G. § 2B1.1(b)(2), which yields an increase of 2 offense levels;

5) The offense involved a vulnerable victim for purposes of U.S.S.G. § 3A1.1(b)(1), which yields an increase of 2 offense levels;

6) The defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive for purposes of U.S.S.G. § 3B1.1(a), which yields an increase of 4 offense levels.

b. The defendant will not be assessed the following sentencing enhancements:

1) The four-level enhancement for an offense which involved 50 or more victims in accordance with U.S.S.G. 2B1.1(b)(2);

2) The two-level sophisticated means enhancement under U.S.S.G. § 2B1.1(b)(1);

3) The two-level enhancement for a large number of vulnerable victims under U.S.S.G. § 3A1.1; and

4) The two-level enhancement for obstruction of justice under U.S.S.G. § 3C1.1.

c. Given the defendant's agreement to plead guilty, the United States will not oppose a two-level reduction for acceptance of responsibility under the provisions of Section 3E1.1(a) of the Sentencing Guidelines. Further, if the defendant's offense level is 16 or greater, and the defendant is awarded the two-level reduction pursuant to Section 3E1.1(a), the United States agrees to move, at or before the time of sentencing, the Court to decrease the offense level by one additional level pursuant to Section 3E1.1(b) of the Sentencing Guidelines. Should the defendant engage in any conduct or make any statements that are inconsistent with accepting responsibility for the defendant's offense, including violations of conditions of release or the commission of additional offenses prior to sentencing, the United States will be free not to make such motion or to withdraw such motion if already made, and will be free to recommend to the Court that the defendant not receive any offense level reduction for acceptance of responsibility under Section 3E1.1 of the Sentencing Guidelines.

d. The defendant and the United States stipulate that the foregoing agreed terms yield a Total Offense Level of 33 and an Adjusted Offense Level of 30, without consideration of any motion for downward departure filed by the United States pursuant to U.S.S.G. § 5K1.1. The parties further stipulate that the defendant's Adjusted Offense Level will not exceed 30 (including consideration of all the foregoing sentencing enhancements and mitigation) and stipulate that the United States may (but is not required to) request a motion to depart downward from that adjusted offense level, which motion lies in the sole discretion of the United States.

e. The Court will impose special assessment fees as required by law; and

f. The Court may order forfeiture as applicable and restitution as appropriate.

No promises have been made by any representative of the United States to the defendant as to what the sentence will be in this case. Any estimates or predictions made to the defendant by defense counsel or any other person regarding any potential sentence in this case are not binding on the Court, and may not be used as a basis to rescind this plea agreement or withdraw the defendant's guilty plea. The defendant understands that the sentence in this case will be determined by the Court after it receives the presentence report from the United States Probation Office and any information presented by the parties. The defendant acknowledges that the sentencing determination will be based upon the entire scope of the defendant's criminal conduct, the defendant's criminal history, and pursuant to other factors and guidelines as set forth in the Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553.

7. The defendant agrees to pay the special assessment in this case prior to sentencing.

8. Unless otherwise limited by an agreed preliminary order of forfeiture, the defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, which are in the possession or control of the defendant or the defendant's nominees that were used and intended to be used in any manner or part to commit and to facilitate the commission of a violation of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c) and/or any and all assets and property, or portions thereof, subject to forfeiture as proceeds of the defendant's criminal activities which are in the possession or control of the defendant or the defendant's nominees. The defendant agrees to forfeit the defendant's interest in properties as set forth in a separate agreed preliminary order of forfeiture which will be reviewed by both parties prior to entry and which the defendant may litigate any issues in the order of forfeiture. The defendant further agrees to assist the United States fully in the identification, recovery, and return to the United States of any other assets or portions thereof subject to forfeiture. The defendant further agrees to make a full and complete disclosure of all assets over which the defendant exercises control and those which are held or controlled by a nominee. The defendant agrees to forfeit all interests in the properties set forth in the agreed order of forfeiture and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and the signing of any other documents necessary to effectuate such transfers. The defendant agrees not to object to any civil or criminal forfeiture brought against these properties. The defendant agrees to take all such steps to locate such property and to pass title to the United States before the defendant's sentencing.

9. The defendant agrees that the court shall order restitution, pursuant to any applicable provision of law, for any loss caused to the victims of any offense charged in this case (including dismissed counts) as determined by the court.

10. Financial Obligations. The defendant agrees to pay all fines and restitution imposed by the Court to the Clerk of Court. The defendant also agrees that the full fine and/or restitution amounts shall be considered due and payable immediately. If the defendant cannot pay the full amount immediately and is placed in custody or under the supervision of the Probation Office at any time, the defendant agrees that the Bureau of Prisons and the Probation Office will have the authority to establish payment schedules to ensure payment of the fine and/or restitution. The defendant further agrees to cooperate fully in efforts to collect any financial obligation imposed by the Court by set-off of federal payments, execution on non-exempt property, and any other means the United States deems appropriate. The defendant and counsel also agree that the defendant may be contacted post-judgment regarding the collection of any financial obligation imposed by the Court without notifying the defendant's counsel and outside the presence of the defendant's counsel. In order to facilitate the collection of financial obligations to be imposed with this prosecution, the defendant agrees to disclose fully all assets in which the defendant has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party. In furtherance of this agreement, the defendant additionally agrees to the following specific terms and conditions:

a) If so requested by the United States, the defendant will promptly submit a completed financial statement to the U.S. Attorney's Office, in a form it provides and as it directs. The defendant promises that such financial statement and disclosures will be complete, accurate, and truthful.

b) The defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

c) If so requested by the United States, the defendant will promptly execute authorizations on forms provided by the U.S. Attorney's office to permit the U.S. Attorney's Office to obtain financial and tax records of the defendant.

11. a) In consideration of the concessions made by the United States in this agreement and as a further demonstration of the defendant's acceptance of responsibility for the offense committed, the defendant agrees not to file a direct appeal of the defendant's conviction but retains the right to appeal the sentence imposed.

b) In addition, the defendant knowingly and voluntarily waives the right to file any motions or pleadings pursuant to 28 U.S.C. § 2255 or to collaterally attack the defendant's conviction and/or resulting sentence. The parties agree that the defendant retains the right to raise, by way of collateral review under § 2255, claims of ineffective assistance of counsel or prosecutorial misconduct not known to the defendant by the time of the entry of judgment.

12. This agreement becomes effective once it is signed by the parties and is not contingent on the defendant's entry of a guilty plea. If the United States violates the terms of this agreement, the defendant will have the right to withdraw from this agreement. If the defendant violates the terms of this agreement in any way (including but not limited to failing to enter guilty plea as agreed herein, moving to withdraw guilty plea after entry, or by violating any court order or any local, state or federal law pending the resolution of this case), then the United States will have the right to void any or all parts of the agreement and may also enforce whatever parts of the agreement it chooses. In addition, the United States may prosecute the defendant for any and all

federal crimes that the defendant committed related to this case, including any charges that were dismissed and any other charges which the United States agreed not to pursue. The defendant expressly waives any statute of limitations defense and any constitutional or speedy trial or double jeopardy defense to such a prosecution. The defendant also understands that a violation of this plea agreement by the defendant does not entitle the defendant to withdraw the defendant's guilty plea in this case.

13. The United States will file a Supplement in this case, as is routinely done in every case, even though there may or may not be any additional terms. If additional terms are included in the Supplement, they are hereby fully incorporated herein.

14. This plea agreement and supplement constitute the full and complete agreement and understanding between the parties concerning the defendant's guilty plea to the above-referenced charges, and there are no other agreements, promises, undertakings, or understandings between the defendant and the United States. The parties understand and agree that the terms of this plea agreement can be modified only in writing signed by all of the parties and that any and all other promises, representations, and statements whether made before, contemporaneous with, or after this agreement, are null and void.

WILLIAM C. KILLIAN
UNITED STATES ATTORNEY

12-1-2014
Date

By: Helen Smith
HELEN C.T. SMITH
Assistant United States Attorney

11-28-14
Date

B. C. Rose
BRIAN C. ROSE
Defendant

11/28/2014
Date

Jerry W. Laughlin
JERRY W. LAUGHLIN
Attorney for the Defendant